

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff

V.

KELLEY DRYE & WARREN, LLP

Defendant.

ECF Case
Civil Action No. 10-cv-0655(LTS) (MTD)

PLAINTIFF EEOC’S MOTION TO STRIKE AFFIRMATIVE DEFENSES

Plaintiff Equal Employment Opportunity Commission (“EEOC”) respectfully files this Motion pursuant to Federal Rule of Civil Procedure 12(f) to strike all (or substantial portions of) Defendant Kelley Drye & Warren’s (“Kelley Drye”) Fourth, Ninth, Tenth, Eleventh, Thirteenth, Fifteenth, Sixteenth, Seventeenth and Eighteenth Affirmative Defenses.

For the reasons stated more fully in the EEOC’s Memorandum of Law in Support of this Motion, the challenged Affirmative Defenses improperly assert that EEOC’s claims are barred by the following: the statute of limitations and “filing periods” (Fourth Affirmative Defense); the Complaint contains claims not set forth in the administrative charge (Ninth Affirmative Defense); EEOC and Charging Party Eugene T. D’Ablemont failed to satisfy “statutory and/or administrative prerequisite” to an ADEA action (Tenth Affirmative Defense); EEOC cannot seek relief for individuals who did not file discrimination charges (Eleventh Affirmative Defense); the action is barred because of alleged “waiver, estoppel, laches, ad unclean hands” of D’Ablemont (Thirteenth Affirmative Defense); the action is barred because of alleged “objectionable behavior” of D’Ablemont (Fifteenth Affirmative Defense); and EEOC’s claim for

punitive and compensatory damages are not supported by statute, and even if so, this would be unconstitutional (Sixteenth through Eighteenth Affirmative Defenses). As stated more fully in the EEOC's Memorandum of Law filed herewith, as these Affirmative Defenses have no basis in law, EEOC respectfully requests that the Court grant its motion to strike such Affirmative Defenses under Fed.R.Civ.P.12(f).

The undersigned hereby certifies that EEOC attempted to resolve the issues in this motion with Defendant first by sending Defendant's counsel a 5 page letter on April 5, 2010 detailing EEOC's issues with the Affirmative Defenses that are the subject of this Motion; and thereafter conferring with counsel for Defendant by telephone on April 26, 2010 (on April 22, 2010, this Court granted an extension for the filing of this Motion to allow such conference to occur, as Defendant's counsel had been on a lengthy trial). Such informal efforts to resolve this dispute were unsuccessful.

In support of this Motion, EEOC is filing herewith a Memorandum of Law and a Declaration of Jeffrey Burstein.

Dated: May 3, 2010

Respectfully submitted,

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

/s/

Jeffrey Burstein
Senior Trial Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, May 3, 2010, I electronically filed the foregoing Notice of Motion to Strike Affirmative Defenses with the CM/ECF system which will send an electronic copy of this document to:

Bettina B. Plevan, Esq.
Proskauer Rose, LLP
1585 Broadway
New York, N.Y. 10036

Joseph C. O'Keefe, Esq.
Proskauer Rose, LLP
One Newark Center
Newark, N.J. 07102
Attorneys for Defendant Kelley Drye & Warren, LLP

_____/s/
Jeffrey Burstein
Senior Trial Attorney, EEOC